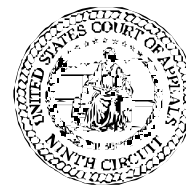


Office of the Clerk
UNITED STATES COURT of APPEALS for the NINTH CIRCUIT
95 Seventh Street, Post Office Box 193939
San Francisco, California 94119-3939



Cathy A. Catterson, Clerk of Court

(415) 556-9800

AMENDMENTS TO THE RULES
Effective July 1, 2002

<i>RULE</i>	<i>TITLE</i>	<i>New or Revised</i>	<i>PURPOSE OF AMENDMENT</i>
C.R. 6-2 (b) & (c) - and - Circuit Advisory Note	Petition for Writ of Certiorari to Review Final Decisions of the Supreme Court of Guam	Revised	To provide guidance on criteria for seeking certiorari.
C.R. 27-1	Filing of Motions	Revised	To ensure reader friendly text
Appendix Forms	Form No. 12 Application for Leave to File Second or Successive Petition Under 28 U.S.C. § 2254 or Motion Under 28 U.S.C. § 2255	New	To assist petitioners wishing to file a second or successive petition

CIRCUIT RULE 6-2

PETITION FOR WRIT OF CERTIORARI TO REVIEW
FINAL DECISIONS OF THE SUPREME COURT OF GUAM

- (a) Petition of Writ of Certiorari.
* * * *

- (b) Consideration Governing Review on Certiorari.

Review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for writ of certiorari will be granted only for compelling reasons. The following, although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers:

- (1) The Supreme Court of Guam has decided an important question of federal or territorial law in a way that conflicts with the decisions of the Supreme Court of the United States, this Court, or another United States court of appeals; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power.

- (2) The Supreme Court of Guam has decided an important question of federal or territorial law that has not been, but should be, settled by this Court.
 - (3) The Supreme Court of Guam was without jurisdiction of the cause, or where, because of disqualification or other reason, the decision of the Supreme Court of Guam lacks the concurrence of the required majority of qualified, non-recused judges.
 - (4) A petition for a writ of certiorari will rarely be granted when the asserted error consists of erroneous findings of fact or the misapplication of a properly stated rule of law. A petition for a writ of certiorari with respect to any issue or any material fact that was omitted from or misstated in the opinion of the Supreme Court of Guam will normally not be considered, unless the omission or misstatement was called to the attention of the Supreme Court of Guam in a petition for rehearing. All other issues and facts may be presented in the petition for a writ of certiorari without the necessity of filing a petition for rehearing. (*New, 7/1/2002*)
- (c) Denomination of the Parties.
 The party petitioning for the writ of certiorari shall be denominated the petitioner; the petitioner's denomination in the appeal or other proceeding before the Supreme Court of Guam shall also be included. All other parties shall be denominated respondents and each respondent's denomination in the appeal or other proceeding before the Supreme Court of Guam shall also be included. Any respondent who supports the position of a petitioner shall meet the time schedule for filing responsive papers. (*New, 7/1/2002*)

CIRCUIT ADVISORY COMMITTEE
NOTE TO RULE 6-2(b) and (c)

The Guam Organic Act, U.S.C. §1424-2, authorizes the Ninth Circuit to "promulgate rules necessary to carry out" its certiorari jurisdiction and function granted by that section. The Ninth Circuit has interpreted the grant of the 15-year interim certiorari jurisdiction to it by §1424-2 as including "jurisdiction to review issues of local Guam law." EIE Guam Corp. v. Supreme Court, 191 F.3d 1123, 1127 (9th Cir. 1999), cert. denied, 120 S. Ct. 980 (2000).

The introductory paragraph of subparagraph (b), and subdivisions (1), (2) and the first part of subdivision (4) are patterned after Rule 10 of the Rules of the Supreme Court of the United States. Subdivision (3) and the latter part of subdivision (4) of subparagraph (b) are patterned after Rule 29(a) of the California Rules of Court, which sets forth the grounds for discretionary review by the Supreme Court of California. Subparagraph (c) is patterned after Rule 40.1(c) of the Hawaii Court Rules.

Indicating that the considerations governing whether the Ninth Circuit will grant a petition for writ of certiorari are similar to and generally limited to those employed by the Supreme Court of the United States is in keeping with the Ninth Circuit's prior indication that it will exercise its certiorari jurisdiction sparingly. See, EIE Guam Corp., 191 F.3d at 1127.

CIRCUIT RULE 27-1

FILING OF MOTIONS

All motions must be filed with the Clerk in San Francisco. Except for same-day emergencies as described in Circuit Rule 27-3(2), counsel should not contact a circuit judge regarding any motion.

(1) Form of Motions

- (a) The typeface and type style requirements of Fed. R. App. P. 32(a)(5) and (6) apply to motions, responses and replies. *(New 7/1/2002)*
 - (b) The court requires an original and four (4) copies of motions, responses to motions, replies, and any supporting papers and appendices. *(Revised 7/1/2002)*
-

Form 12: Appendix to the Rules

**UNITED STATES COURT of APPEALS for the NINTH CIRCUIT
95 Seventh Street
San Francisco, California 94103**

**Application for Leave to File Second or Successive Petition
Under 28 U.S.C. § 2254 or Motion Under 28 U.S.C. § 2255**

Docket Number _____

(to be provided by court)

Petitioner's name _____

Prisoner registration number _____

Address _____

Instructions - Read Carefully

- (1) This application, whether handwritten or typewritten, must be legible and signed by the petitioner under penalty of perjury. An original and five (5) copies must be provided to the Clerk of the Ninth Circuit. The application must comply with 9th Circuit Rule 22-3, which is attached to this form.
- (2) All questions must be answered concisely. Add separate sheets if necessary.
- (3) The petitioner **shall** serve a copy of this application and any attachments on respondent and must complete and file a proof of service with this application.
- (4) The petitioner **shall** attach to this application copies of the magistrate judge's report and recommendation and the district court's opinion in any prior federal habeas proceeding under 28 U.S.C. § 2254 or § 2255 or state why such documents are unavailable to petitioner.

You Must Answer the Following Questions:

- (1) What conviction(s) are you challenging?

- (2) In what court(s) were you convicted of these crime(s)?

- (3) What was the date of each of your conviction(s) and what is the length of each sentence?

For questions (4) through (9), provide information separately for each of your previous §§ 2254 or 2255 proceedings. Use additional pages if necessary.

- (4) With respect to **each** conviction and sentence, have you ever filed a petition or motion for habeas corpus relief in federal court under **28 U.S.C. § 2254** or **§ 2255**?

Yes **G** No **G**

- (a) In which federal district court did you file a petition or motion?

- (b) What was the docket number? _____

- (c) On what date did you file the petition/motion? _____

- (5) What grounds were raised in your previous habeas proceeding?
(list all grounds and issues previously raised in that petition/motion)

- (6) Did the district court hold an evidentiary hearing? Yes **G** No **G**

- (7) How did the district court rule on your petition/motion?

G District court **dismissed** petition/motion
if yes, on what grounds? _____

G District court **denied** petition/motion;

G District court **granted** relief;

if yes, on what claims and what was the relief?

(Attach copies of all reports and orders issued by the district court.)

(8) On what date did the district court decide your petition/motion?

(9) Did you file an appeal from that disposition? Yes **G** No **G**

(a) What was the docket number of your appeal? _____

(b) How did the court of appeals decide your appeal? _____

(10) State concisely each and every ground or issue you wish to raise in your current petition or motion for habeas relief. Summarize briefly the facts supporting each ground or issue.

(11) For each ground raised, was it raised in the state courts? If so, what did the state courts rule and when?

(12) For each ground/issue raised, was this claim raised in any prior federal petition/motion? (list each ground separately)

(13) For each ground/issue raised, does this claim rely on a new rule of constitutional law? (list each ground separately and give case name and citation for each new rule of law)

(14) For each ground/issue raised, does this claim rely on newly discovered evidence? What is the evidence and when did you discover it? Why has this newly discovered evidence not been previously available to you? (list each ground separately) _____

(15) For each ground/issue raised, does the newly discovered evidence establish your innocence? How?

(16) For each ground/issue raised, does the newly discovered evidence establish a federal constitutional error? Which provision of the Constitution was violated and how?

(17) Provide any other basis for your application not previously stated.

Date: _____ Signature: _____

Proof of Service on Respondent MUST be Attached.